(1)

Supreme Court, U.S.
FILED

031385 JAN 30 2004

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

DOLORES HOLGUIN — PETITIONER, pro-se.

vs.

GREENLEE COUNTY FLOOD CONTROL DISTRICT,
et. al. — RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES
COURT OF APPEALS 9th CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DOLORES HOLGUIN

H.C.R. BOX 191

DUNCAN, ARIZONA 85534

928-359-2302

QUESTIONS PRESENTED

The United States Congress, under the Senate Energy and WaterDevelopment Appropriations Bill of July 22, 1992 and the Arizona House Bill 2098, allocated funds of $10,822,675 for the relocation of 86 household displacees of the October 3, 1983, San Francisco River flood disaster.

Relocation assistance under the Stafford Act PL93288 et. seq., and PL91646, Part 24, et. seq., Part 24.404(c)(l)(iii) and (vi), Replacement Housing of Last Resort, and Part 24.2(d), comparable conventional housing was denied to the Petitioner. Petitioner was processed in comdemnation proceedings (District Court Order, pg. 5) as a project displacee and obligated under duress to accept a mobile home, which is not a conventional home under 24.404(c)(l)(iii) and (vi) (Court Order, pg. 5).

United States Court of Appeals 9th Circuit affirmed the District Court's decision on standing, sovereign immunity and F.R.Civ.P.12(b)(6) and entering a decision in conflict with the decision of another United States Court of Appeals, 9th Circuit (cite 149 F. 3d 997, (1998) on the same important matter.

LIST OF PARTIES

DOLORES HOLGUIN

PETITIONER, pro-se,

v.

FLOOD CONTROL DISTRICT OF GREENLEE COUNTY, ARIZONA;

ARIZONA DEPARTMENT OF EMERGENCY AFFAIRS, DIVISION OF EMERGENCY MANAGEMENT, AN ENTITY OF THE STATE OF ARIZONA;

DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS FOR THE STATE OF ARIZONA, AN ENTITY OF THE STATE OF ARIZONA;

ACQUISITION SCIENCE L.T.D., AN ARIZONA CORPORATION;

FEDERAL EMERGENCY MANAGEMENT AGENCY,

RESPONDENTS

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United States Court of Appeals for the Ninth Circuit
Appeal from the United States District Court
Case No. 02-17415 / D.C. No. CV-01-00482-FRZ
Date of entry: July 29, 2003

APPENDIX B

United States District Court for the District of Arizona
Declaratory Judgement and Injunctive Relief
Case No. CV 01-482 TUC FRZ
Date of entry: September 30, 2002

APPENDIX C

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States court of appeals decided my case was July 29, 2003.

[X] A timely petition for rehearing was denied by the United States court of appeals on the following date: November 6, 2003, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(l).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (PL 93288).

§ 5143. Coordinating officers

(a) Appointment of Federal coordinating officer

Immediately upon his declaration of a major disaster or emergency, the President shall appoint a Federal coordinating officer to operate in the affected area.

(c) State coordinating officer

When the President determines assistance under this chapter is necessary, he shall request that the Governor of the affected State designate a State coordinator officer for the purpose of coordinating State and local disaster assistance efforts with those of the Federal Government.

§ 5174. Temporary housing assistance

(a) Provision of temporary housing

(1) In general

The President may —

(A) provide, by purchase or lease, temporary housing (including unoccupied habitable dwellings), suitable rental housing, mobile homes, or other readily fabricated dwellings to persons who as a result of a major disaster, require temporary housing;

(3) Period

Federal financial and operational assistance under this

section shall continue for not longer than 18 months after the date of the major disaster declaration by the President, unless the President determines that due to extraordinary circumstances it would be in the public interest to extend such 18-month period.

(4) Federal share

The Federal share of assistance under this section shall be 100%;

§ 5181. Relocation assistance

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) [42 U.S.C. 4601 et seq.] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

§ 5189b. Date of eligibility; expenses incurred before date of disaster

Eligibility for Federal assistance under this subchapter shall begin on the date of the occurrence of the event which results in a declaration by the President that a major disaster exists; except that reasonable expenses which are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this chapter.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

Pub. L 91-6146, 84 Stat. 1894 (42 U.S.C. 4601); as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-251 (42 U.S.C. 4601 note): and 49CFR 1.48(cc).

Sec. 24.2 Definitions

(d) Comparable replacement dwelling. The term comparable replacement dwelling means a dwelling which is:

(1) Decent, safe and sanitary as described in paragraph (f) of this section;

(2) Functionally equivalent to the displacement dwelling. The term functionally equivalent means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used.

However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling.

Sec. 24.204

(b) Circumstances permitting waiver. The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demon

strated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(c) Basic conditions of emergency move. Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

Sec. 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) Eligibility. A displaced person is eligible for a replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacment dwelling for not less than 180 days immediately prior to the initiation of negotiation:

Sec. 24.404 Replacement housing of last resort.

(b) Basic rights of persons to be displaced. Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the

Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) Methods of providing comparable replacement housing. Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in s 24.401 or s 24.402. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers to the handicapped.

(viii) The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.

STATEMENT OF THE CASE

The Petitioner Plaintiff, an approved applicant for disaster relief under the Stafford Act, PL93288 et.seq., brought suit for the compliance of PL91646 that mandates the subject matter of flood disaster relocation for housing of last resort Part 24.404 (c) (l) (iii) (vi), the construction of a new replacement dwelling and the purchase of land by the displacing agency and subsequent exchange with a displaced person to a comparable replacement dwelling under 24.2 (d).

The Petitioner lived in a conventional home in the October 3, 1983, flood disaster. Relocation funds of $10,822,675 were allocated by the United States Congress under the Senate Energy and Water Appropriations Bill, and the Arizona House Bill 2098 for 86 households flood disaster displacees exclusively.

The District Court ruled that Plaintiff, as a private citizen, does not have standing to challenge the actions of agencies generally under the Acts. (District Court Order, pg. 7.)

The District Court order finds that the Plaintiff's claims are precluded under applicable provisions of A.R.S. § 12-821. (District Court Order, pg. 14.)

The Federal Court of Appeals memorandum states,

> Dolores Holguin appeals pro-se the district court's judgement dismissing with prejudice his actions challenging the compensation he received as relocation benefits from the Clifton Flood Control Project when his mobile home was damaged in a 1983 flood." (Memorandum, pg. **2**.)

Defendant ADEM, an employee of FEMA under PL93288, sec. 5143 on this flood disaster, was a participant in an intergovernmental agreement with Greenlee County Flood

Control District to build a 3000 foot long levee for flood control in the south part of Clifton. Under A.R.S. 48-2605 (a), the District lacked jurisdiction north of the Greenlee County Flood Control District boundaries on the private property of the 86 households flood disaster displacees, whereupon the relocation allocated Congressional funds are not benefits from the Clifton Flood Control Project.

Petitioner qualified for relocation assistance under Sec. 5181, and eligibility for Federal assistance to begin on the date of the event, Sec. 5189(b) of the Robert T. Stafford Disaster and Relief and Emergency Assistance Act, PL93288, and Real Property Acquisition Policy Act of 1970, PL91646, Part 24.204 (c), for relocation payment.

In conflict with another U.S. Court of Appeals 9th Circuit (before: D.W. Nelson, Boochever, and Reinhardt, circuit judges), Reinhardt, circuit judge:

> At the same time, we conclude that applicants whose applications had been approved have standing to file suit under § 10(a) of the Administrative Procedures Act. We also hold that these individuals' claims are not subject to dismissal under Fed.R.Civ. P. 12(b)(6) on grounds of sovereign immunity. (149 F. 3d 997, 1000.)
>
> On appeal, the Plaintiffs assert that the District Court erred because the A.P.A. unequivocally waives sovereign immunity with respect to their claims for injunction and declaratory relief. We conclude that the District Court erred in granting the Defendants12(b)(6) motion on the basis of agency discretion. (149 F.3d 997, 1004.)
>
> N7. Because the Plaintiff's claims fall within the underlying statute's zone of interest, they need not also demonstrate that they seek to vindicate their own legal rights under the underlying statute at issue. They are asserting their own legal rights under the A.P.A. (See

Catholic Social Services v. Shalala 12F.3d 1123, 1126 (DC Cir. 1994), (holding that once the Plaintiff suing under §10(a) of the A.P.A. satisfy its zone of interest, they "need not satisfy the third party interest standard."); *Rogers v Brockette*, 558 F. 2d 1057, 1061 & n.8 (5th Cir. 1979) (same).

Even if states that receive disaster assistance are also within the Acts' zone of interest, the Acts' real beneficiaries, the individuals *1005 and families who suffer losses due to natural disasters, fall well within the Acts' general policy concerns.

N8. A.P.A. § 702 reads in relevant part: A person suffering wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority *shall not be dismissed nor relief therein be denied on the grounds that it is against the United States*, or that the United States is an indispensable party.
5.U.S.C. § 702 (emphasis added). It is worth adding that the Plaintiff's request for an injunction that would require FEMA to pay its share of funds is not considered a claim for "money damages" and therefore, is not barred by sovereign immunity. See *Bowen v. Massachusetts* 487 U.S. 879, 108 S.Ct.2722, 101 L.Ed. 2d.749 (1988) (holding that suits seeking actual funds owed to claimants are suits for "injunctive" relief under A.P.A. §702); *Blue Fox Inc.*

v. Small Business Administration 121 F.3d 1357, 1361 (9th Cir. 1997) (same). 149 F. 3d 997, 1005 N8.

While we think it plain that under the Stafford Act, just as under the more well known Federal Torts Act (see 28 U.S.C. § 2680 (a)) "decisions involving the allocation and deployment of limited governmental resources are the type of administrative judgement that the discretionary function exception was designed to immunize from suit." *Fang v. United States* 140 F.3d 1238, 1241-42 (9th Cir. 1998), the exception will not apply when a federal statute, regulation or policy specifically prescribes a course of action for an employee to follow." *Berkovitz v. United States*, 486 U.S. 531, 536, 108 S.Ct. 1954, 100 L.Ed. 531 (1988). In that event, the employee and the agency have "no rightful option but to adhere to the directive." 1d.

REASONS FOR GRANTING THE PETITION

Petitioner's family was displaced by a flood disaster in 1983. Petitioner cleaned the home dwelling, basement and two-car garage. Contractors' repair estimates were obtained for pre-flood home condition January 10, 1984.

Agency ADEM (Arizona Department of Emergency Management) ordered flood displacees not to repair nor re-occupy their flooded homes, that relocation to a new housing development would take place.

Agency FEMA, through the federal coordinating officers of PL93288, Sec. 5143 (a) (c), acknowledged ADEM's actions and withdrew temporary housing of Sec. 5174 on the 12th month of the 18 months allowed.

The State of Arizona did not allocate funds for displacee relocation and did not mandate ADEM to relocate displacees. The 86 disaster displacees households became homeless, as their homes were further destroyed by looters and vandals.

In January, 1993, a flood levee was proposed on the Army Corps of Engineers' "Record of Decision" for the south Clifton section of the Town of Clifton. ADEM hired an attorney that drafted resolution FCD 94-01 in February, 1994, and an intergovernmental agreement to build the south Clifton levee, which was completed in 1996.

On September 3, 1997, the displacees were advised there were no funds for relocation, but expected federal funds in 4 to 6 weeks. In May, 1998, the flood displacee petitioner was offered a $62,060 mobile home as relocation entitlement by Acquisition Science LTD., the relocation corporation obtained by ADEM, for the task of project relocation process of Part 24.401.

Part 24.401 is for 180-day home owner displacees. Petitioner declined this mobile home offer as unacceptable and presented

agency ADEM a contractor's estimate for a concrete foundation, conventional 3-bedroom, basement, and 2-car garage home, specified under Part 24.2(d) comparable replacement dwelling, at a contractor's value of $137,000, plus the value of the property for the replacement dwelling.

The congressional allocated funds exclusively for flood disaster displacees were afforded in 1992, before the conception of the levee project, designed in 1994, and thereafter named the Clifton Flood Control Project. This was ADEM's conversion of flood disaster status to project displacee status for relocation purpose under 24.401. This was called the relocation benefits from the Clifton Flood Control Project on the Federal Court of Appeals Memorandum, pg. 2.

The Petitioner was presented a September 15, 2000, deadline to accept this $62,060 mobile home or lose all congressional allocated funds for his comparable conventional dwelling.

The lower courts have been presented by the Defendants a false relocation process for flood disaster displacees, which includes appraisals of property and the process of imminent domain through state court jurisdiction concerning federal law matter.

Future disaster events must be dealt timely in compliance of federal law, and diligently, with dignity.

CONCLUSION

The petition for a writ of certiorari shoud be granted.

Respectfully submitted,

DOLORES HOLGUIN

Date: March 26, 2004

Supreme Court, U.S.
FILED

(2)

031385 JAN 30 2004

FILED
JUL 29 2003
CATHY A. CATTERSON
CLERK, U.S.COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOLORES HOLGUIN,

Plaintiff-Appellant,

v.

FLOOD CONTROL DISTRICT OF GREENLEE COUNTY, ARIZONA, a political subdivision of the State of Arizona; et al.,

Defendants-Appellees.

No. 02-17415

D.C. No. CV-01-00482-FRZ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frank R. Zapata, District Judge, Presiding

Submitted July 21, 2003**

Before: LEAVY, HAWKINS, and RAWLINSON, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

APPENDIX A

Dolores Holguin appeals pro se the district court's judgment dismissing with prejudice his action challenging the compensation he received as relocation benefits from the Clifton, Arizona Flood Control Project when his mobile home was damaged in a 1983 flood. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo. *Murphy v. Lanier*, 204 F.3d 911, 912 (9th Cir. 2000) (lack of subject matter jurisdiction); *Kimes v. Stone*, 84 F.3d 1121, 1126 (9th Cir. 1996) (failure to state a claim). We affirm.

The district court properly dismissed Holguin's claims against the state agency defendants because Holguin failed to show an express waiver of Eleventh Amendment immunity or make a proper request for prospective injunctive relief. *See Yakama Indian Nation v. Wash. Dep't of Revenue*, 176 F.3d 1241, 1245 (9th Cir. 1999).

The district court properly concluded that it lacked jurisdiction over Holguin's claims against the Federal Emergency Management Agency. *See Graham v. Fed. Emergency Mgmt. Agency*, 149 F.3d 997, 1001 & n.1 (9th Cir. 1998) (holding that the Stafford Act does not create a private right of action). The district court also properly concluded that Holguin failed to state a claim against the remaining defendants. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (holding that the district court is not required to accept as true conclusory allegations, unwarranted deductions of fact, or unreasonable inferences), *amended* by 275 F.3d 1187 (9th Cir. 2003).

We decline to consider Holguin's contentions raised for the first time on appeal. *See In re Jan Weilert RV, Inc.*, 315 F.3d 1192, 1199 (9th Cir. 2003), *amended by* 326 F.3d 1028 (9th Cir. 2003).

AFFIRMED.

FILED
SEP 30 2002
CATHY A. CATTERSON
CLERK, U.S.COURT OF APPEALS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

DOLORES HOLGUIN,

Plaintiff,

v.

FLOOD CONTROL DISTRICT OF GREENLEE COUNTY, ARIZONA, et al.,

Defendants.

No. CV 01-482 TUC FRZ

ORDER

Introduction

Plaintiff Dolores Holguin filed the present action on September 18, 2001 "under 49 CFR Part 24, 24.404 and PL 93 288 Section 5181, 5189 and Section 91-646 et al," for declaratory judgment and injunctive relief against five agency Defendants.

The Complaint sets forth two claims for declaratory and injunctive relief, alleging generally that Plaintiff was a flood disaster displacee and eligible for an exchange of property relocation "and was deliberately and falsely processed as a project displacee so as to appraise his property at a lower value and eliminate the responsibility for providing him with a comparable home."

Named as Defendants are Flood Control District of Greenlee County, Arizona; Arizona Department of Emergency Affairs, Division of Emergency Management; Department of Emergency

and Military Affairs for the State of Arizona; Acquisition Sciences Ltd.; and Federal Emergency Management Agency.

For purposes of discussion, Defendant Arizona Department of Emergency Affairs, Division of Emergency Management and Defendant Department of Emergency and Military Affairs for the State of Arizona will be referred to collectively as the State Agency Defendants interchangeably with "ADEM," consistent with all filings.

Count One of the Complaint sets forth a claim for "a declaratory judgment that defendants have violated Housing of last resort PL 91-646 Par 24.404 (c)(1)(iii) and (vi) which requires the construction of a standard conventional comparable replacement dwelling and subsequent exchange with the person displaced" requesting that the Court "render a declaratory judgment that Plaintiff is thereby entitled to a conventionally built home to replace the dwelling that was lost, and not a mobile home; such conventional home to have a concrete foundation and be built on site."

Count Two raises a claim for injunctive relief and requests "an injunction to prevent defendants from harming Plaintiff by withdrawing applicable benefits" and "enjoin the defendant from forcing the Plaintiff to accept the substandard mobile home under threat of losing benefits, and prevent defendant from wrongfully withholding monetary benefits from Plaintiff."

Plaintiff requests that judgment be entered against the named Defendants for "compensatory damages, including an order such that the defendants are required to purchase a conventionally built home, not a mobile home for Plaintiff;" "damages as allowed by 49 CFR Section 24.107 allowing reimbursement to the owner of the property all reasonable expenses and reasonable attorney fees incurred where the court renders judgment in favor of the property owner;" and costs and attorney's fees in accordance with state law.

The Complaint is inartfully and insufficiently plead. Although Plaintiff is proceeding pro se, the Complaint was filed on Plaintiffs behalf through the representation and appearance of counsel, who moved to withdraw subsequent to the filing of the Complaint.

The applicable statutory and regulatory provisions, which Plaintiffs Complaint inadequately and incorrectly refers to, are as follows: The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, et seq. (Public Law 91-646)[1] ("Uniform Reform Act"); The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, 42 U.S.C. § 5121, et seq., (Public Law 93-288)("Disaster Relief Act"); 49 C.F.R. Part 24, promulgated under of the Uniform Reform Act; and 42 U.S.C. § 5181 and 42 U.S.C. § 5189 of the Disaster Relief Act.

The focus of Plaintiff's claims is that he is entitled to an increase in the relocation assistance benefits awarded to him by ADEM under the Uniform Relocation Act, based on Plaintiff's belief that the Defendants are required to build him a new home to replace his "standard conventional comparable dwelling."

Plaintiff also filed on April 16, 2001, an untitled supplement which is a compilation of letters and documentation of communications with agencies, counsel, and financial documentation offered in support of his claims.

Before the Court for consideration are the following dispositive motions: (I) Rule 12(b) Motion to Dismiss by State Agency Defendants; (II) Defendant FEMA's Motion to Dismiss/ Motion for Summary Judgment; (III) Defendant Acquisition Sciences' Motion to Dismiss; In the Alternative, Motion for

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[1] As amended by Title IV of the "Surface Transportation and Uniform Relocation Assistance Act" of 1987 (Public Law 100-17)

More Definite Statement; and (IV) Rule 12(b) Motion to Dismiss by Flood Control District Defendant.

Legal Standard

All Defendants move for dismissal under Rule 12(b) of the Rules of Federal Civil Procedure for failure to state a claim, Rule 12(b)(6), and/or for lack of subject matter jurisdiction under Rule 12(b)(l).

In reviewing a motion to dismiss, all allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party. Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002)(citing Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001). "A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitled the plaintiff to relief." Id.

Furthermore, *pro se* pleadings shall be liberally construed in review of a defendant's motion to dismiss for failure to state a claim. Id. (citing Ortez v. Washington County Oregon, 88 F.3d 804, 807 (9th Cir.1996). Dismissal of a *pro se* complaint without leave to amend is proper only if it is clear that the deficiencies of the complaint can not be cured by amendment. Flowers v. First Hawaiian Bank, 295 F.3d 966, 976 (9th Cir. 2002)(citing Lucas v. Dept. of Corrections, 66 F.3d Cir. 245, 248049 (9th Cir. 1995)(per curiam).

A complaint will not be dismissed under Rule 12(b)(6) unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief. Thompson v. Davis, 295 F.3d at 895.

The Plaintiff has the burden of proving jurisdiction in order to survive a motion to dismiss under Rule 12(b)(l). Sepp v. Tracy, 2002 WL 741644, *1 (D.Ariz.2002)(citing Tosco v. Comtys. for a Better Env't, 236 F.3d 495, 499 (9th Cir. 2000). A case is properly dismissed when the court lacks the statutory

authority or constitutional power to adjudicate the case. Id.

Facts

Following and in response to the 1983 Clifton Flood Disaster, the Clifton Flood Control Project was enacted in 1994, and superceded in 1998, to "prevent future damages to persons or property otherwise subject to severe periodic flooding by the San Francisco River."[2] Pursuant to this resolution, the Flood Control District and Arizona Division of Emergency Management entered into an intergovernmental agreement.

Plaintiff owned a property he inherited from his mother at 112 North Patterson's Addition Road, Clifton, Arizona, which fell within the Clifton Flood Control Project.

After numerous communications, much confusion, and administrative appeals, Plaintiff was ultimately determined to be eligible to receive relocation benefits from the Clifton Flood Control Project as an "owner-occupant" of the Clifton property and determined to be eligible for relocation benefits and compensation for the property, in a sum of $65,560 ($62,060 for relocation and $3,500 for the acquisition), at the time condemnation proceedings were pending.[3]

Plaintiff asserts that "[t]he ADEM offered on May 13, 1998 a mobile home and mandated a September 15, 2000 deadline to acquire it or lose all relocation benefits."[4]

Plaintiff asserts that he informed ADEM that the $62,060 mobile home was not a conventional home and therefore unacceptable, and that Plaintiff, "under duress to comply with the upholding of his relocation benefits of an estimated $131,815

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[2] Resolution 98-01-FCD

[3] See September 21, 1999 Letter from counsel for Acquisition Sciences.

[4] Complaint, ¶ 6.

conventional standard comparable replacement home,"[5] acquired a $73,500 mobile home, which "is not a conventional home as defined under 24.404 et al."[6]

Plaintiff asserts that as a resident of Clifton, Arizona, and a 1983 Federal Flood Disaster displacee, he was entitled to relocation under the Uniform Relocation Act and "eligible and qualified for relocation housing payment under PL 91646 Part 24.204(c)(3) and housing of last resort was instituted under PL 91646 Part 24.205(a)(2)."

Discussion

Under the legal standard required for consideration of Defendants' motions to dismiss under Rule 12(b), FED.R.CIV.P., Plaintiff has been afforded the benefit of consideration of all his filings in the review and analysis of whether anything Plaintiff has presented might be construed as sufficient to set forth a claim under the Uniform Relocation Act or Disaster Relief Act.

Plaintiff fails to meet the basic pleading requirements under Rule 8(a), FED.R.CIV.P. It does not appear, however, that granting leave to amend is appropriate under the legal standard of review for a motion to dismiss pursuant to Rule 12(b)(6).

In "Plaintiff Motion to Dismiss the /Defendants Motion to Dismiss," filed in opposition to Defendant Flood Control District's dispositive motion, Plaintiff sets forth his best argument for establishing liability against the individually named agency Defendants, which is nonetheless far from sufficient to state a claim.

Plaintiff fails, however, to address the issues of immunity, statute of limitations, and administrative time and review

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[5] Plaintiff bases this amount on an informal estimate for replacement housing from a contractor.

[6] Complaint, ¶¶ 7, 8 & 10.

preclusion issues. Because the Court finds that the Plaintiff has failed to state a claim under Rule 12(b)(6), there is no need to reach these issues on the merits. Dismissal, however, is also appropriate under immunity and time preclusion as to the State Agency Defendants and the county Defendant Flood Control District, as well as under the applicable statute of limitations periods as to Defendants Acquisition Sciences and FEMA. FEMA is also immune from actions challenging the agency's discretionary functions.

Plaintiff's claims appear to stem in great part from his frustration with the administrative relocation and condemnation process under the Clifton Flood Control Project, to which the Arizona Division of Emergency Management conceded "that ADEM acknowledges that there has been considerable confusion in your particular case, and that correspondence and other information you have received has been contradictory."[7]

Most of the confusion occurred with Plaintiff's eligibility status determination, which Plaintiff appears to believe is material or determinative of his relocation benefits.[8]

Plaintiff also, in great part, challenges, collectively, the Defendants' alleged noncompliance with the provisions of the Uniform Relocation Act and the Disaster Relief Act. However, Plaintiff, as a private citizen, does not have standing to challenge the actions of agencies generally under the Acts.

Simply stated, Plaintiff fails to state what specific acts each or any of the named Defendants did, and how, under the administrative and statutory provisions, any act is actionable,

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[7] July 30, 1998 Letter of Clarification to Plaintiff from Counsel for Defendant Acquisition Sciences.

[8] Counsel for Defendant Acquisition Sciences attempted to explain this to counsel who Plaintiff had consulted with. See November 19, 1998 Letter addressed to J.R. Evans, Willoghby & Evans, P.C.

and under what authority Plaintiff would be entitled to the relief requested.

Although Plaintiff fails to address any time or review preclusion issues, by his own admissions in the Complaint, that he "acquired a $73,500.00 mobile home under duress to comply with the upholding of his relocation benefits of an estimated $131,815 conventional standard comparable replacement home by a reputable area contractor," Plaintiff had full knowledge of the "acts" for which he seeks redress, at the latest, before September 11, 2000,[9] and clearly is precluded from pursuing any administrative review proceeding at this time.

I. Rule 12(b) Motion to Dismiss by State Agency Defendants

Defendants Arizona Department of Emergency Affairs, Division of Emergency Management and the Department of Emergency and Military Affairs of the State of Arizona move for dismissal under Rule 12(b)(1), for lack of subject matter jurisdiction, and Rule 12(b)(6), for failure to state a claim on the grounds that (l) the State Agencies are immune from suit in this matter under the Eleventh Amendment to the United States Constitution; (2) the named State Agencies are not jural entities under Arizona law susceptible to suit in any judicial proceeding; (3) Plaintiff has failed to allege compliance with the Arizona claims statute and therefore, any action for damages is barred; (4) the Court lacks subject matter jurisdiction to conduct judicial review of final administrative actions of the State Agency Defendants; (5) claims for judicial review of administrative action of state agencies are time barred under A.R.S. § 12-821; (6) claims for damages against state agency Defendants are time barred under A.R.S. § 12-821.01; and (7) the statutes and rules cited by Plaintiff do not require the State Agency Defendants to

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[9] Buyers Closing Statement

build the Plaintiff a new home, and therefore, fail to state a claim upon which relief can be granted.

Plaintiff alleges that ADEM and the other Defendants "have refused to comply with 24,404 et al, and have not provided a comparable conventional replacement dwelling," which Plaintiff asserts requires the construction of a new replacement comparable dwelling and the purchase of land by the displacing agency and subsequent exchange with the displacee. Plaintiff offers in support of his opposition an estimate from January 1984, asserting that the "$11,650 repair estimates reafirms that Plaintiff's home as a standard conventional dwelling for a comparable home determination under 24.404(c)(1)(III)(vi)."

Plaintiff also offers an informal estimate from a contractor, of $137,000, for the construction of a new "replacement" home.

Plaintiff focuses only on ADEM's alleged noncompliance under the Uniform Relocation Act and suggests the improper allocation of relief funds. Plaintiff argues that "[t]he issue to be considered in this Federal District Court is the standard conventional comparable replacement dwelling for the flood disaster displacee required under PL 91646 part 24.404(c)(l(ii)(vi).

Plaintiff fashions his arguments merely on select statutory and regulatory language provisions to substantiate his claims and fails to address the issues raised. In his opposition and at the time of hearing, Plaintiff failed to address the issues of Eleventh Amendment immunity and state claim and statute of limitation time preclusion.

The Court finds that Plaintiff's claims against the State Agencies are barred by the Eleventh Amendment. The Eleventh Amendment affords states protection from suits brought by citizens in federal court. See Douglas v. California Department of Youth Authority, 271 F.3d 812, 817-818, as amended 271 F.3d 910 (9th Cir. 2001), reh'g enbanc denied, 285 F.3d 1226

(9th Cir.) cert. denied. --- U.S. ---, 122 S.Ct. 2591 (2002)(citing College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board., 527 U.S. 666, 669, 119 S.Ct. 2219, 2223 (1999). There are only three exceptions to this general rule. Id. First, a state may waive its Eleventh Amendment defense. Id. (citing College Savings Bank, 527 U.S. at 670, 119 S.Ct. at 2223). Second, Congress may abrogate the States' sovereign immunity by acting pursuant to a grant of constitutional authority. Id. (citing Kimel v. Florida Board of Regents, 528 U.S. 62, 80, 120 S.Ct. 631, 644 (2000). Third, under the *Ex parte Young* doctrine, the Eleventh Amendment does not bar a "suit against a state official when that suit seeks ...prospective injunctive relief." Id. (quoting Seminole Tribe of Florida v. Florida, 517 U.S. 44, 73, 116 S.Ct. 1114, 1132 (1996).

As the State Agency Defendants assert, the State has not waived its Eleventh Amendment immunity. Nor does either the Uniform Relocation Act or the Disaster Relief Act abrogate Arizona's Eleventh Amendment immunity. Furthermore, there is no proper request for injunctive relief before the Court. Accordingly, the State Agency Defendants, specifically, Defendant Arizona Department of Emergency Affairs, Division of Emergency Management and Defendant Department of Emergency and Military Affairs for the State of Arizona, are immune from suit in this action under the Eleventh Amendment.

Moreover, Plaintiff has failed to allege compliance with the Arizona claims statute and therefore, any action for damages is barred.

Because this Court lacks jurisdiction, it is not necessary to address the issues of time and claim preclusion, however, it is clear from the provision of A.R.S. § 12-821, requiring that "[a]ll actions against any public entity or public employee shall be brought within one year after the cause of action accrues and

not afterward," that Plaintiffs claims are also time barred."[10]

Notwithstanding the foregoing, the statutes and rules cited by Plaintiff do not require the State Agency Defendants to build or find the Plaintiff a new home as asserted, and thus, fail to state a claim upon which relief can be granted. Accordingly, the State Agency Defendants' Rule 12(b) motion to dismiss shall be granted.

II. Defendant FEMA's Motion to Dismiss/Motion for Summary Judgment

Defendant Federal Emergency Management Agency, the only federal agency named in the Complaint, moves to dismiss the Complaint on the bases (1) FEMA had no involvement in the Plaintiff's award of relocation benefits and is therefore entitled to summary judgment; and (2) the Complaint fails to state a claim against FEMA.

Offered in support of FEMA's argument that FEMA was not involved in the award of Plaintiff's relocation benefits is a declaration by the custodian of records, stating that there are no FEMA records pertaining to Plaintiff's relocation and that if FEMA were involved, such records would have been available.

Defendant FEMA argues that in the event the Court determines that summary judgment is not appropriate, the Court should dismiss the Complaint against it for failure to state a claim or require that the Plaintiff file a more definite statement. Defendant FEMA argues that Plaintiff has failed to comply with the pleading requirements of Rule 8(a)(2), Fed.R.Civ.P., to properly place FEMA on notice of the claims against it.

Defendant FEMA also asserts that if any claims are cognizable, such would be untimely under the six year statute

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[10] "[C]laims against a public entity or public employee must be filed within one hundred eighty days after the cause of action accrues." A.R.S. §12-821.01.

of limitation period for claims against the United States, because, if any allegation that can be construed against FEMA exists, such relates to the providing of assistant in 1983 and 1984.

Filed in response to Defendant FEMA's motion is "Plaintiff Motion to Disregard and Dismiss/Defendant Motion to Dismiss/ Motion for Summary Judgement" in which Plaintiff attempts to only explain the provisions under which he proceeds. Plaintiff fails, however, to oppose Defendant FEMA's request for dismissal, and at best, implies FEMA was made aware of Plaintiff's concerns based on correspondence between FEMA and ADEM through Congressmen Hayward and McCain, and that "Fema and ADEM are termed to be 'Associates in Office,'" and that "Fema's recognition and the position of their flood disaster displacees' outcome has been clowded and misrepresented by ADEM's advisement to FEMA."

The Stafford Act does not provide for a private right of action. Graham v. Federal Emergency Management Agency, 149 F.3d 997, 1001 (9th Cir. 1998).

Moreover, the allegations, set forth in Plaintiff's response to FEMA's motion, are insufficient, even as such allegations are set forth in the Complaint, to state a claim against FEMA.

Based on the foregoing, the Court finds that FEMA's motion to dismiss should be granted as a matter of law.

III. Defendant Acquisition Sciences' Motion to Dismiss; In the Alternative, Motion for More Definite Statement

Defendant Acquisition Sciences moves to dismiss this action against it, asserting that the Complaint "falls woefully short of alleging any identifiable claim against ASL upon which relief can be granted to the Plaintiff" and "fails to state any basis or theory upon which the Court could determine that ASL is liable..."

Defendant Acquisition Sciences further asserts that "[e]ven read in a light most favorable to the Plaintiff, the most the

Complaint alleges is that ASL, acting as an agent for one or more of the other Defendants, communicated to Plaintiff a date certain upon which he had to either accept certain relocation benefits or lose his ability to claim them" but "does not allege that ASL established that date, that it dictated that such date would be a deadline or that it ever had any authority to do either.

Defendant Acquisition Sciences further asserts that the Complaint does not allege that it was in any specific way wrongful, or in violation of any federal or state statute, and, therefore, the Complaint should be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

In opposition to Defendant Acquisition Sciences' motion, Plaintiff attempts to fashion an argument, in addition to his general assertions of noncompliance, that a rental assistance payment recommendation of December 30, 1997, removed the $65,880 calculation of May 29, 1996, and that Acquisition Sciences "was involved and responsible for the calculation for the false Rental assistance Payment ... responsible for the ...calculation ... as a Project Displacee and instrumental in the Sept. 15, 2000 deadline set on the Plaintiff to purchase a $62,060.00 mobile home or lose all relocation benefits."[11]

The Court finds that Plaintiff fails to substantiate any of his claims or his allegations against Acquisition Sciences.

There is no factual or legal basis to support Plaintiff's allegations that, although undisputedly entitled to relocation under the Uniform Relocation Act, he is "eligible and qualified for relocation housing payment under PL 91646 Part 24.204(c)(3) and housing of last resort ... under PL 91646 Part 24.205(a)(2)."[12]

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[11] "Plaintiff Motion to Dismiss/Defendant Motion to Dismiss," page 3.

[12] Id., ¶4

The Court therefore finds that Acquisition Sciences' motion to dismiss must also be granted.

IV. Rule 12(b) Motion to Dismiss by Flood Control District Defendant

The final Defendant, Flood Control District of Greenlee County, moves for dismissal on the bases (1) Plaintiff has failed to allege compliance with A.R.S. 12-821.01, thereby barring any action for damages; (2) Plaintiff is barred from proceeding against the Flood Control District because all claims against the Flood Control District have already been adjudicated; (3) The Plaintiff has failed to allege any wrongful conduct on the part of the Flood Control District other than to group the District with other agency Defendants; (4) Plaintiff's claim for judicial review of administrative action of state agencies is time barred by A.R.S. § 12-821; (5) claims for damages against state agency Defendants is time barred by A.R.S. § 12-821.01; and (6) the Complaint fails to state a claim upon which relief can be granted because the statutes and rules cited by Plaintiff do not require the Flood Control District to build Plaintiff a new home.

In opposition to the Flood Control District's motion to dismiss, Plaintiff asserts that "[t]he Flood Control District has joined together with Agency ADEM in the classification of Project displacees to include the flood disaster displacees so that the standard conventional comparable housing of last resort not be complied under 24.404 (c)(1)(iii)(vi) as stated in the March 30, 1998 ADEM Director's letter.

The Court finds that Plaintiff's claims are precluded under the applicable provisions of A.R.S. § 12-821, and further fail to state a claim upon which relief can be granted.

Conclusion

Although Plaintiff asserts that "ADEM and the other Defendants have refused to comply with provisions under the

Uniform Relocation Act and the Disaster Relief Act, Plaintiff fails to allege sufficiently, and there appears to be no set of facts that could show, what any individual Defendant agency has done wrong.

Therefore, construing all filings by Plaintiff liberally and taking all allegations of material fact as true and construed in the light most favorable to Plaintiff, the Court finds that Plaintiff has failed to state a claim upon which relief can be granted, and thereby, shall dismiss the Complaint pursuant to Rule 12(b)(6).

The Court further finds that the deficiencies of the Complaint cannot be cured by amendment, see Flowers, 295 F.3d at 976, and that it appears beyond doubt that Plaintiff can prove any set of facts in support of his claims that would entitle him to relief. See Thompson v. Davis, 295 F.3d at 895. This action shall therefore be dismissed with prejudice.

Based on the foregoing,

IT IS HEREBY ORDERED that "Rule 12(b) Motion to Dismiss by State Agency Defendants" [Doc. #10] is **GRANTED;**

IT IS FURTHER ORDERED that "Defendant FEMA's Motion to Dismiss/Motion for Summary Judgment" [Doc. #19] is **GRANTED;**

IT IS FURTHER ORDERED that "Defendant Acquisition Sciences' Motion to Dismiss" [Doc. #22] is **GRANTED;**

IT IS FURTHER ORDERED that the **"Rule 12(b) Motion to Dismiss by Flood Control District Defendant"** [Doc. #24] is **GRANTED;**

IT IS FURTHER ORDERED that all other pending matters are denied as moot: Judgment shall be entered accordingly.

Dated this 27th day of September, 2002.

s/ HONORABLE FRANK R. ZAPATA
United States District Judge

_____FILED _____LODGED
_____RECEIVED _____COPY

SEP 30 2002

CLERK, U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY_____s/_____DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

DOLORES HOLGUIN,

Plaintiff,

v.

FLOOD CONTROL DISTRICT OF GREENLEE COUNTY, ARIZONA; et al.,

Defendants.

JUDGEMENT IN A CIVIL CASE

Case No. CV-01-00482-FRZ

X **DECISION BY COURT.** This action came under consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED that "Rule 12(b) Motion to Dismiss by State Agency Defendants" [Doc. #10] **is GRANTED;**

IT IS FURTHER ORDERED that Defendant FEMA's Motion to Dismiss/Motion for Summary Judgment" [Doc.#19] **is GRANTED;**

IT IS FURTHER ORDERED that "Defendant Acquisition Sciences' Motion to Dismiss" [Doc.#22] **is GRANTED.**

IT IS FURTHER ORDERED that the "Rule 12(b) Motion to Dismiss by Flood Control District Defendant" [Doc.#24] **is GRANTED.**

IT IS ORDERED AND ADJUDGED that this action is **DISMISSED WITHOUT PREJUDICE.**

September 27, 2002
Date

RICHARD H. WEARE
Clerk

s/ M. Michelle Mejia
(By) Michelle Mejis, Deputy Clerk

Copies to: ALL PARTIES, FRZ, JB

_____FILED _____LODGED
_____RECEIVED _____COPY

OCT 4 2002

CLERK, U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY_____s/_____DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

DOLORES HOLGUIN,

Plaintiff,

v.

FLOOD CONTROL DISTRICT OF GREENLEE COUNTY, ARIZONA; et al.,

Defendants.

JUDGEMENT IN A CIVIL CASE
AMENDED as to dismissed with prejudice only

Case No. CV-01-00482-FRZ

X **DECISION BY COURT.** This action came under consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED that "Rule 12(b) Motion to Dismiss by State Agency Defendants" [Doc. #10] **is GRANTED;**

IT IS FURTHER ORDERED that Defendant FEMA's Motion to Dismiss/Motion for Summary Judgment" [Doc.#19] **is GRANTED;**

IT IS FURTHER ORDERED that "Defendant Acquisition Sciences' Motion to Dismiss" [Doc.#22] **is GRANTED.**

IT IS FURTHER ORDERED that the "Rule 12(b) Motion to Dismiss by Flood Control District Defendant" [Doc.#24] **is GRANTED.**

IT IS ORDERED AND ADJUDGED that this action is **DISMISSED WITH PREJUDICE.**

October 4, 2002
Date

RICHARD H. WEARE
Clerk

s/ M. Michelle Mejia
(By) Michelle Mejis, Deputy Clerk

Copies to: ALL PARTIES, FRZ, JB

FILED
NOV 06 2003
CATHY A. CATTERSON, CLERK
CLERK, U.S.COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOLORES HOLGUIN,

Plaintiff-Appellant,

v.

FLOOD CONTROL DISTRICT OF GREENLEE COUNTY, ARIZONA, a political subdivision of the State of Arizona; et al.,

Defendants-Appellees.

No. 02-17415

D.C. No. CV-01-00482-FRZ
Arizona
(Tucson)

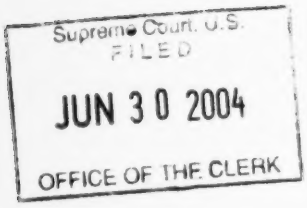
ORDER

Before: LEAVY, HAWKINS, and RAWLINSON,
Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

No further filings will be accepted in this closed appeal.

APPENDIX C



No. 03-1385

IN THE

SUPREME COURT OF THE UNITED STATES

DOLORES HOLGUIN — PETITIONER, pro-se.

vs.

GREENLEE COUNTY FLOOD CONTROL DISTRICT,
et. al. — RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES
COURT OF APPEALS 9th CIRCUIT

PETITION FOR REHEARING

DOLORES HOLGUIN

H.C.R. BOX 191

DUNCAN, ARIZONA 85534

928-359-2302

GROUNDS

A. Intervening circumstances of a substantial effect.

(1.) ADEM's counsel communication document of September 21, 1999, exercised **coercion** on the Petitioner, that the Petitioner would forfeit congressional funding to a conventional, comparable home under part 24.404 (c)(l)(iii)(vi) unless the terms of part 24.401 project acquisition value of private property are signed over to agency ADEM by Oct. 8, 1999, deadline, which provided the Sept. 15, 2000, deadline where the Petitioner acquired under **duress** the $62,060 unacceptable mobile home.

Document September 21, 1999:

> Please be advised that if you do not accept the above determination and execute the documents necessary to conclude the condemnation proceedings and transfer ownership of the property to the Project on or before Oct. 8, 1999, the funds which would otherwise be used to pay your benefits will instead be used towards funding the construction of the Project recreational facilities.
>
> While additional funds may be requested from the legislature at some point in the future, we cannot tell you exactly when that will occur or how much might be appropriated.
>
> We would expect an indefinite delay in the receipt of any additional funds.

(2.) The licensed home builder value of $137,000 for a conventional, comparable home entitlement, in contrast with the mobile home value of $62,060 obtained by appellant under **duress**, the deprived difference in value of $74,940 being retained by the agency ADEM's intent to convert or steal, is appropriately called "**larceny**."

(3.) The Greenlee County Flood Control District **deception** and **negligance** of duty to protect flood disaster displacee private property from the premises of Resolution 98-01 FCD affirming Resolution 94-02 FCD and the intergovernmental agreement for the sole purpose of uniting the "integral component" to the South Clifton Levee Project, contrary and **short of statutory right** of ARS 48-2605A.

ARS 48-2605A states:

> "Nor shall any land which will not, in the judgement of the Board, be benefited generally or especially by drainage by means of the system of works be included within the proposed District."

(4.) Acquisition Science L.T.D. **pre-conceived negligence** and **wanton deception** of false relocation process of 4-139(e) and 4-138(b), use of manufactured mobile homes, Federal law substitution on displacee basic rights, based on unlawful application of the General Design Memorandum.

(5.) State agency ADEM's intervention on the 86 flood disaster household displacees relocation of the July 1992 congressional funding is an **arbitrary and capricious deception**.

(6.) The Town of Clifton, Greenlee County, Arizona, did not have and was not involved with Federal assisted projects or programs before and after the July 1992 U.S. Congressional funding, whereas no Federal funding agency and Federal lead agency were in existence for the U.S. Congressional funding of $10,822,675 disaster displacee relocation per subpart G certification 24.602(d)(2).

Part 24.602(d)(2) states:

> The Federal funding agency shall transmit all complete approved applications for certification to the Federal lead agency.

(7.) Agency ADEM's **wanton deception** intervened substantially on the effect of Federal flood disaster displacees relocation in July, 1992, by asserting unlawful control of relocation and setting relocation on continuous delay

B. Intervening circumstances of controlling effect.

(1.) Agency ADEM's administrators by Arizona Governor's consent under PL93288 sec. 5170 were assisting cognizant agency FEMA in 1983 flood disaster in Clifton.

(2.) ADEM's **pre-conceived deception** in 1984 under FEMA, without announced authority or jurisdiction, ordered flood disaster displacees not to repair or reoccupy their flooded homes, asserting control of relocation to Table Top housing development that did not materialize.

(3.) ADEM's **deceptive action** of Table Top relocation influenced cognizant agency FEMA to retrieve temporary housing under PL93288 sec. 5174 on the 12th month of the 18 months allowed, committing a **breach of Federal law**.

(4.) ADEM's 1984 **unlawful possession** of flood disaster displacees' private property without owners' consent is contrary to the U.S. Constitution 5th and 14th amendments - "Nor be deprived of property without due process of law."

Respectfully submitted,

DOLORES HOLGUIN

Date: June 28, 2004

Derick D. Rapier Greenlee County Attorney P.O. Box 1717 Clifton, Arizona 85533	(928) 542-8341 Greenlee County Flood Control District
Charles K. Ayers 4227 North 32nd Street Phoenix, Arizona 85018	(602) 468-5700 Acquisition Science L.T.D.
Charles A. Grube Assistant Attorney General 1275 West Washington Street Phoenix, Arizona 85003	(602) 542-8341 State Agencies
Paul K. Charlton U.S. Attorney 405 West Congress, Suite 4800 Tucson, Arizona 85701-5040	(602) 574-7500 FEMA

Solicitor General of the United States
State Room 5614
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 28, 2004.

Dolores Holguin

CERTIFICATE OF COUNSEL

The Petition for Rehearing here presented is restricted to the grounds specified in Rule 44.2 and this petition for rehearing is presented in good faith and not for delay.

Dolores Holguin

Dolores Holguin
pro-se